REMARKS

1. Request for Examiner's Interview

After leaving earlier voicemail messages requesting an interview to discuss this case, on September 8, 2009, the undersigned attorney reached Examiner Lee to renew the request for an interview. The undersigned attorney noted that prosecution on the case seemed to be growing unnecessarily long; that the invention seems misunderstood by the Examiner (and conversely, the undersigned attorney may not be fully grasping what the USPTO seeks to move the case forward); and that all parties would likely benefit from a discussion of the invention and the issues raised in the last Office Action.

On September 10, 2009, Examiner Lee contacted the undersigned attorney and stated that no interview would be granted until a Response was filed.

An interview is again requested, either before this Response is substantively reviewed or immediately thereafter. There is a high likelihood that many, if not all, issues can be resolved in discussion. Kindly contact the undersigned attorney so that an interview may be scheduled at a mutually convenient time.

2. The Amendments, the Support Therefor, and Basis for Entry

One claim is canceled (claim 8), one claim is added (claim 34), and claim 6 is amended to leave claims 1-3, 5-8, 16, 18-19, and 21-34 in the application. Support for the amendment to:

- ***The specification*** is found at page 3 line 25-page 4 line 6 (pars. [0016]-[0017] of corresponding US Publn. 2006/0253992) and page 4 line 28-page 5 line 2 (par. [0020] of corresponding US Publn. 2006/0253992).
- ***Claim 6*** is found in FIG. 3.
- ***Claim 34*** is found in FIG. 1 and at page 3 lines 25-32, particularly at lines 31-32 (par. [0016] of corresponding US Publn. 2006/0253992); see also the discussion at Section 5 of this Response (below).

3. Sections 2-4 of the Office Action: Drawing Objections

Section 2 of the Office Action objects to ***FIG. 1*** because:

> Fig. 1 seems to be a top view of the invention and it is understood that all cells 2 are equal, but it is unclear as to why the shapes of the cells change and why the anchor point for each cell is moved when moving up the page.

Kindly reconsider and withdraw the objection. FIG. 1 simply shows how the tension and bending of the cells may be varied along the length of the bed; as cells are tensioned/bent to a greater extent, the more they will deflect from their anchor points. See also page 3 lines 25-32 ("As shown in FIGS. 1 and 2, loop straps 1 hold the central section of the cells 2 linearly in parallel with the cell axis 11 whereas the opposite ends 3 of the cells 2 are secured a pre-determined distance 4 off-set from the cell axis 11. *The distance 4 can vary along the length of the pad.*") As noted in prior Responses (and in the application), the bent/tensioned cells are intended to prevent the "conveyor effect" that ordinary (e.g., straight) inflatable cells generate when they inflate and deflate, wherein the cells move the patient along the length of the bed as they inflate and deflate (see page 1 lines 18-27). This effect can be more pronounced where a section of the bed is inclined, since gravity can assist in moving the patient downwardly along the length of the bed (see page 4 lines 19-22). Thus, the bed is depicted in FIG. 1 with the cells being more highly tensioned into more curved shapes near the head of the bed, which is more likely to be inclined upwardly.

Section 3 of the Office Action objects to ***FIG. 2*** because:

> it is unclear as to what Figure 2 is showing. The brief description of Figure 2 states that Figure 2 is a schematic view showing the retaining means of the cells of the pad; however, Figure 1 does not show the cells having the same shape as in Figure 2. It is unclear whether Figure 2 is a second embodiment. Furthermore, the drawing descriptions to Figures 1-3 disclose that Figures 1-3 are schematic views. It is unclear as to what this means since Figures 1-3 are not showing schemes or diagrams.

Kindly reconsider and withdraw this objection as well. Clarifying amendments have been made to the drawing descriptions of both FIG. 2 and the other drawings, with FIG. 1 now being identified as a "simplified top plan view" (see also page 3 line 25), FIG. 2 now being identified as a "schematic top view conceptually illustrating the bends in the cells 2 induced by the loop straps 1 and anchored cell ends 3," and FIG. 3 now being identified as a "schematic top view conceptually illustrating an end length of a cell 2 and the bend induced therein by loop strap 1 and an anchor hook 20 which

secures the cell end (see FIG. 4)." In view of these amendments, there should be no lack of clarity as to what the drawings depict. As to the objection to the use of the word "schematic," this term is commonly understood in the art to be a diagram which simply illustrates concepts, and which may not be an exact / literal representation of what it shows. See, e.g., the online encyclopedia *Wikipedia* at http://en.wikipedia.org/wiki/Schematic:

> A schematic is a diagram that represents the elements of a system using abstract, graphic symbols rather than realistic pictures. A schematic usually omits all details that are not relevant to the information the schematic is intended to convey, and may add unrealistic elements that aid comprehension.

See also, for example, the online dictionary *Encarta* (http:// encarta.msn.com/ encnet/ features/ dictionary/ DictionaryResults.aspx?refid=1861702170):

> showing layout: showing the basic form or layout of something

When FIG. 2 is reviewed in light of the specification, it's clear that it simply illustrates the concept of tensioning the cells into bent states, and the amendment to the description of FIG. 2 should further avoid any confusion. The amendments to the other drawing descriptions (of FIGS. 1 and 3-4) should also assist a reader's understanding.

Section 4 of the Office Action objects to the drawings under 37 CFR §1.83(a) because:

> The drawings must show every feature of the invention specified in the claims. Therefore, the bend being within a plane parallel to the pad in claim 1; the bends of the cells rest in a common plane in claims 25 and 26; and the pad base is aligned coplanarly with the plan of the curves of the cells in claim 30 must be shown or the feature(s) canceled from the claim(s).

Kindly withdraw these objections as well. The bend being within a plane parallel to the pad 10 is shown in FIG. 1; the bends of the cells 2 resting in a common plane is shown in FIGS. 1 and 2; and the pad base 10 being aligned coplanarly with the plane of the curves of the cells 2 is also shown in FIG. 1. (A review of Sections 5-12 of this Response, presented below, may be useful.) Thus, 37 CFR §1.83(a) is fully complied with.

4. Section 5 of the Office Action: Specification

Kindly reconsider and withdraw this objection to FIG. 3. The rejection states that "there is no support in the current disclosure that the pad base (12) shifts when the cells are inflated/deflated."

However, the drawing does not illustrate such "shifting": it shows the bend in the cell (which is held to the pad 12 by loop strap 1) when cell end 3 is fixed to pad 12 via anchor hook 20. See, e.g., page 4 lines 1-6 of the application (par. [0017] of corresponding US Publn. 2006/0253992):

> By fixing of the ends 3 of the cells 2 at a distance 4 away from the cell axis, each end 3 of the cell 2 is pulled away from the centre axis of the cell, the loop straps 1 holding the central section of the cell become tensioned, preventing the central cell section from moving or rotating.

Thus, FIG. 3 does not illustrate any new matter, and 35 USC §132(a) is fully complied with. As noted above, the drawing description for FIG. 3 has been amended to clarify what FIG. 3 depicts.

5. Section 6 of the Office Action: Rejection of Claims 1-3, 5-8, 21 and 22 under 35 USC §112(1)

Claims 1-3, 5-8, 21 and 22 are rejected for alleged failure to comply with the written description requirement:

> Amended claim 1 recites "the retaining means urge the lengths of the cells into a bent shape" and "the bend being within a plane parallel to the pad". There is no support for these limitations in the current disclosure.

These rejections are clearly erroneous and should be withdrawn. See, e.g., page 2 line 31-page 3 line 2 of the application ("In the preferred embodiment, the retaining means comprise loop straps fixed to the pad base retaining the central region of each cell and hook type fasteners retaining each opposite end of the cell"); FIG. 1 (both as amended and as originally filed), showing the bends of the cells 2 in a plane parallel to pad 12; and FIG. 3, showing the retaining means (loop straps 1 and hook type fasteners 20) urging the lengths of the cells into a bent shape. See also page 3 lines 27-31 ("FIG. 1 shows a plan view of a pad 10 comprising a bank of interleaving linear cells 2 extending transversely of the pad 10. As shown in FIGS. 1 and 2, loop straps 1 hold the central section of the cells 2 linearly in parallel with the cell axis 11 whereas the opposite ends 3 of the cells 2 are secured a pre-determined distance 4 off-set from the cell axis 11"); page 4 lines 1-6 ("By fixing of the ends 3 of the cells 2 at a distance 4 away from the cell axis, each end 3 of the cell 2 is pulled away from the centre axis of the cell, the loop straps 1 holding the central section of the cell become tensioned, preventing the central cell section from moving or rotating"); page 4 lines 28-33 ("each cell end 3

is fitted with a anchor shaped hook 20 which is inserted into a corresponding slot on the pad base 12. . . . The hook ends 21 enter the apertures 13 and secure the cell end 3 to the pad base 12").

Stated simply, consider that the loop straps 1 extending about the central parts of the cells are affixed to the pad base 12 (page 2 line 31-page 3 line 2), as are the anchors 20 at the ends of the cells (page 4 lines 28-33), and the ends of the cells are anchored offset from the axes of the cells (page 3 lines 27-31). This arrangement plainly describes a pad having cells restrained in bent form atop the pad, in a plane along the pad.

6. Section 7 of the Office Action: Rejection of Claims 1-3, 5-8, 21 and 22 under 35 USC §112(1)

Claims 1-3, 5-8, 21 and 22 are then rejected for alleged failure to comply with the enablement requirement:

> Amended claim 1 recites "the retaining means urge the lengths of the cells into a bent shape" and "the bend being within a plane parallel to the pad". The current disclosure does not enable how the cells are urged into a bent shape through the retaining means and in what direction the cells are bent (i.e. upwards towards the user, downwards away from the user, towards the head end of a user, or towards the foot end of the user).

These rejections are clearly erroneous and should be withdrawn. Any artisan of ordinary skill would understand these matters from the passages and drawings discussed above at Section 5 of this Response. See also, e.g., FIG. 1 and page 3 lines 27-31 ("FIG. 1 shows a plan view of a pad 10 comprising a bank of interleaving linear cells 2 extending transversely of the pad 10"). As to which direction the cells are bent, if they're bent upwardly or downwardly, they wouldn't be bent within a plane parallel to the pad (as claimed); and it doesn't matter whether they're bent toward the head end or toward the foot end of a user. Enablement is clearly commensurate with the scope of the claims.

7. Section 8 of the Office Action: Rejection of Claims 6-8 under 35 USC §112(1)

Claims 6-8 are then rejected for alleged failure to comply with the written description requirement:

> Claim 6 recites "the retaining means are offset at different distances from the centre linear axis of the cell". This limitation is not supported in the current disclosure.

Claim 6 has been amended to clarify that the *loop straps* (1 in FIG. 3) of the retaining means and the *fasteners* (20 in FIG. 3) of the retaining means are offset at different distances from the cell axis. See page 3 lines 27-32 ("As shown in FIGS. 1 and 2, loop straps 1 hold the central section of the cells 2 linearly in parallel with the cell axis 11 whereas the opposite ends 3 of the cells 2 are secured a pre-determined distance 4 off-set from the cell axis 11.") As clarified, the claim is plainly supported by the foregoing portions of the description and drawings.

8. Section 9 of the Office Action: Rejection of Claims 16, 18, 19, and 26 under 35 USC §112(1)

Claims 16, 18, 19, and 26 are then rejected for alleged failure to comply with the enablement requirement:

> Amended claim 16 recites "wherein the loops and the fasteners urge the lengths of the cells into curved shapes" and "with cells being received within the curves of adjacent cells". The current disclosure does not enable how the cells are urged into a curved shape through the loops and fasteners and in what direction the cells are curved (i.e. upwards towards the user, downwards away from the user, towards the head end of a user, or towards the foot end of the user).

These rejections are clearly erroneous and should be withdrawn. Also see FIG. 1 and page 3 lines 27-31, which clearly describes cells being received in other cells' curves ("FIG. 1 shows a plan view of a pad 10 comprising a bank of *interleaving* linear cells 2 extending transversely of the pad 10"). Also see the comments in Section 6 above regarding enablement of claims 1-3, 5-8, 21 and 22.

9. Section 10 of the Office Action: Rejection of Claims 21-24 under 35 USC §112(1)

Claims 21-24 are then rejected for alleged failure to comply with the enablement requirement:

> [T]he specification, while being enabling for the cells being bent, Figs. 2 and 3, does not reasonably provide enablement for how the cells are bent and in what direction the cells are bent. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

See the comments above regarding enablement of claims 1-3, 5-8, 21 and 22. It cannot seriously be contended that an ordinary artisan would not understand how to make and use the matter of these claims.

10. Section 11 of the Office Action: Rejection of Claims 25-26 under 35 USC §112(1)

Claims 25 and 26 are then rejected for alleged failure to comply with the written description requirement:

> Claims 25 and 26 recite "wherein the bends of the cells rest in a common plane". This limitation is not supported in the current disclosure. Although Figure 2 shows three cells that have a bend in a common plane, it is unclear whether the three cells shown in Figure 2 are stacked or whether the three cells are trying to depict a partial view of Figure 1.

These rejections are clearly erroneous and should be withdrawn. See, e.g., FIG. 1, showing bent cells, and page 3 lines 27-31 ("FIG. 1 shows a plan view of a pad 10 comprising a bank of interleaving linear cells 2 extending transversely of the pad 10. As shown in FIGS. 1 and 2, loop straps 1 hold the central section of the cells 2 linearly in parallel with the cell axis 11 whereas the opposite ends 3 of the cells 2 are secured a pre-determined distance 4 off-set from the cell axis 11"). Consider also that the loop straps 1 extending about the central parts of the cells are affixed to the pad base 12 (page 2 line 31-page 3 line 2), as are the anchors 20 at the ends of the cells (page 4 lines 28-33). An elongated cell affixed in such a manner – having its central region and ends affixed to the pad base – will naturally extend along a common plane (one atop the pad base).

11. Section 12 of the Office Action: Rejection of Claims 27-33 under 35 USC §112(1)

Claims 27-33 are then rejected for alleged failure to comply with the written description requirement:

> Claim 27 recites "wherein the cells: (1) curve along their lengths". The current disclosure only discloses "linear cells" throughout the specification. The specification does support the cell curving but only when the cell is tensioned. The claims are not directed to a method of using a pressure pad. Claim 30 recites "the pad base is aligned coplanarly with the plane of the curves of the cells". There is no support of this limitation in the current disclosure.

Regarding claim 27, the specification also clearly shows bending of the "linear cells." See, e.g., FIG. 1, showing bent cells, and page 3 lines 27-31 ("FIG. 1 shows a plan view of a pad 10 comprising a bank of interleaving linear cells 2 extending transversely of the pad 10. As shown in FIGS. 1 and 2, loop straps 1 hold the central section of the cells 2 linearly in parallel with the cell axis 11 whereas the opposite ends 3 of the cells 2 are secured a pre-determined distance 4 off-set from the cell axis 11").

As for claim 30, consider also that the loop straps 1 extending about the central parts of the cells are affixed to the pad base 12 (page 2 line 31-page 3 line 2), as are the anchors 20 at the ends of the cells (page 4 lines 28-33). An curved cell affixed in such a manner – having its central region and ends affixed to the pad base – will naturally curve atop, and in the same plane as, the pad base.

12. Section 13 of the Office Action: Rejection of Claims 27-33 under 35 USC §112(1)

Claims 27-33 are then rejected for alleged failure to comply with the enablement requirement:

> Claim 27 recites "wherein the cells: (1) curve along their lengths". The current disclosure does not enable one of ordinary skill in the art to make a curve along the lengths of the cells. The current disclosure fails to describe how the cells are curved and in what direction the cells are curved.

See the comments above. It cannot seriously be contended that an ordinary artisan would not understand how to make and use curved cells – for example, as by simply taking the cells with their central regions fixed within loops 1, and anchoring their ends at an offset distance, as shown in FIG. 1. (See page 3 lines 27-31: "FIG. 1 shows a plan view of a pad 10 comprising a bank of interleaving linear cells 2 extending transversely of the pad 10. As shown in FIGS. 1 and 2, loop straps 1 hold

the central section of the cells 2 linearly in parallel with the cell axis 11 whereas the opposite ends 3 of the cells 2 are secured a pre-determined distance 4 off-set from the cell axis 11.")

13. Section 14 of the Office Action: Rejection of Claims 1-3, 5-8, 16, 18, 19, and 21-33 under 35 USC §112(2)

These claims plainly meet with 35 USC §112(2) since an ordinary artisan would comprehend the bounds of the claims when read in light of the specification, particularly the drawings and the passages of the written description noted above. As noted by the Court of Appeals for the Federal Circuit in *Miles Laboratories Inc. v. Shandon Inc.*, 27 USPQ2d 1123, 1126 (Fed. Cir. 1993):

> The "distinctly claiming" requirement [of 35 USC §112(2)] means that the claims must have a clear and definite meaning when construed in the light of the complete patent document. ... Section 112 thus ensures definiteness of claim language. ... The test for definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification. ... If the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, Section 112 demands no more.

(Citations omitted.) Or, as simply stated by MPEP 2173.02, the claims must "provid[e] clear warning to others as to what constitutes infringement of the patent." Further, as noted in the foregoing quote, a claim must be read in light of its specification to determine whether it is definite. See also *Howmedica Osteonics Corp. v. Tranquil Prospects Ltd.*, 74 USPQ2d 1680, 1683 (Fed. Cir. 2005) ("[t]he definiteness of a patent claim depends on whether one skilled in the art would understand the bounds of the claim when read in light of the specification"); MPEP 2173.02 ("Definiteness of claim language must be analyzed, not in a vacuum, but in light of . . . . [t]he content of the particular application disclosure . . . .").

Here, the claims are concisely worded in such a manner that their meaning is clear, both when read in a vacuum and even more so when read in light of the specification (particularly the passages noted above). To illustrate, read claims 23 and 37 in a vacuum: can it really fairly be said that you do not have a clear understanding of what is claimed? Further, now read these in light of the specification, which notes that the loop straps 1 extending about the central parts of the cells are affixed to the pad base 12 (page 2 line 31-page 3 line 2), as are the anchors 20 at the ends of the cells (page 4 lines 28-33), and the ends of the cells are anchored offset from the axes of the cells (page

3 lines 27-31). As this arrangement plainly describes a pad having cells restrained in bent form atop the pad, any ordinary artisan would plainly understand what is encompassed by the claims.

14. Section 16 of the Office Action: Rejection of Claims 1-3 and 5-8 under 35 USC §102 in view of U.S. Patent 6,349,439 to *Cook et al.*

U.S. Patent 6,349,439 to *Cook* illustrates a pressure pad (as in FIG. 1) having sets of alternately inflatable cells 1 and 2 wherein each cell is retained atop a base sheet 3 (seen in FIG. 3) by loops 4 (FIG. 1); see column 2 lines 53-55. Several loops 20 at one end of the pad are elastic, whereby these loops exert radial force on their cells to accelerate deflation (column 2 lines 56-67). FIG. 2 illustrates an alternative embodiment wherein cells are encased in sleeves 10 which are in turn held by elastic loops 20 to attain the same effect (column 3 lines 6-17).

FIGS. 4 and 5A-5C of *Cook* then illustrate an arrangement for retraining the base sheet 3 (and thus the cells 1 and 2 above) to a bed, wherein securing straps (21 in FIG. 4, 21a in FIGS. 5A/5B, and 21c in FIG. 5C) extend from the edges of the base sheet 3 to a portion of the bed (shown unlabeled in FIGS. 5A-5C); see column 3 lines 41-57. The straps 21 include loops 21a (FIGS. 5A/5B) or folds 21c (FIG. 5C) which expand to avoid tension on the straps 21 (and thus on the base sheet 3). When a patient lies on the cells of FIG. 5A, the edges of the pad may bend upwardly away from the base sheet 3 as seen in FIG. 5B as the center of the pad is pushed downwardly. In this case, the loops/folds 21a and 21c can open/unfold (as in FIGS. 5B-5C) to accommodate the bending of the pad without tearing the straps 20 off of the bed (see column 3 lines 53-57).

The rejections are clearly erroneous and must be withdrawn. Anticipation under 35 U.S.C. §102(b) requires that each and every limitation recited by the claim be found in a single prior art reference (MPEP 2131), a condition which is not present here. See also *Net MoneyIN Inc. v. VeriSign Inc.*, 88 USPQ2d 1751, 1758-1759 (Fed. Cir. 2008) ("We thus hold that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. §102.")

Here, ***claim 1*** recites that the retaining means urge the lengths of the cells into a bent shape across the pad, with the bend being within a plane parallel to the pad. In *Cook*, the retaining means – which the Office Action asserts are straps 4 and 20 – do *not* urge the lengths of the cells into a bent shape. They hold the cells, but clearly do not bend them. If the Office believes otherwise, kindly indicate for the record where *Cook* discloses such bending. When making a rejection, "it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int. 1990), *citing to Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984); see also MPEP 707.07(d); 37 CFR §1.104(c)(2). Furthermore, it is notable that even if *Cook*'s restraining means *did* urge the cells into the shape shown in FIG. 5B (which they don't, since *Cook* notes that the patient's weight causes the cells to effect this shape), these cells are bent *perpendicular* to the plane of the pad (i.e., they curve upwardly away from the plane of the pad). Again, if it is believed otherwise, kindly specifically identify where *Cook* discloses this feature.

Regarding ***claim 3***, the *Cook* straps 4 and 20 do not secure the opposite ends of each cell at a distance from the center linear axis of the cell, and secure the central region about the center linear axis, such that the lengths of the cells are bent. It is clear from the *Cook* drawings that the *Cook* straps 4 and 20 retain the lengths of the cells in a straight/linear form.

Similarly, regarding ***claim 6***, the *Cook* straps 4 and 20 are not offset at different distances with respect to the center linear axis of the cell, such that the length of each cell is bent. It is clear from the *Cook* drawings that the *Cook* straps 4 and 20 rest at the same distances from the center linear axes of their cells.

Regarding ***claims 5 and 8***, column 3 lines 41-48 of *Cook* are cited as allegedly disclosing the recited fasteners. However, column 3 lines 41-48 of *Cook* discusses straps which *hold the pad base 3 atop the bed*, whereas the recited fasteners releasably retain each end of the cell to the pad base. *Cook* therefore does not disclose the recited arrangement.

15. Section 17 of the Office Action: Rejection of Claims 1-3 and 5-8 under 35 USC §103 in view of U.S. Patent 5,966,762 to *Wu* and U.S. Patent 6,349,439 to *Cook*

Before reviewing the rejections, a brief overview of *Wu* is useful. Referring to FIG. 1, the *Wu* reference shows a mattress having a number of inflatable cells 1 within an envelope 2 (column 2 lines 7-19), with the inflatable cells 1 being held on/in the envelope 2 via buttons and sockets 11 (FIGS. 6-7) which engage the opposing ends of the cells 1 to the envelope 2, and fastening belts / straps 12 (FIGS. 1, 6-7) which extend from the base 20 of the envelope 2 about the circumferences of the cells 1 (column 2 lines 19-27). Inflatable "body turning means" 5 (inflatable cells 50, 50a, 50b, FIGS. 1 and 6-8) -- in essence, inflatable cells extending across the length of the underside of the mattress, and situated at the opposing transverse sides of the underside of the mattress -- can be inflated as shown in FIGS. 7-8 to turn a patient from side to side (column 2 line 64-column 5 line 25). Similar "leg bending means" 4 (inflatable cells 40, 40a, 40b, FIGS. 1 and 3-5) and "head lifting means" 6 (inflatable cells 60, 61, 62, FIGS. 9-10) -- inflatable cells extending across the width of the underside of the mattress, and arrayed across portions of the length of the underside of the mattress -- can be inflated to lift the patient's legs and/or head (column 2 lines 33-60, column 3 lines 26-38).

As explained in MPEP 2142:

> To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant"s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

We submit that if this process is followed, with the matter of ***claim 1*** being placed out of mind and the prior art being objectively considered from the standpoint of an ordinary artisan, it cannot fairly be said that the ordinary artisan would contemplate or consider the matter of claim 1, and thus of its dependent claims 2-3 and 5-8. Neither *Wu* nor *Cook* would lead an ordinary artisan to contemplate cells bent within a plane *parallel* to the pad. *Cook*'s FIG. 5B shows a cell bent perpendicular to the

plane of the pad (i.e., upwardly), and FIGS. 7-8 of *Wu* show a similar arrangement. Following the analysis mandated by MPEP 2142 above, why would an ordinary artisan truly consider this arrangement in view of *Wu* and/or *Cook*?

16. New Claim 34

The matter of claim 34 is not shown in *Cook*, wherein bent cells (in FIG. 5B) are oriented in planes perpendicular to the pad base rather than parallel to it. The same is true of *Wu* (see FIG. 8). Similarly to the discussion in the foregoing Section 15 of this Response, there is simply no apparent reason why the claimed arrangement would come to mind when an ordinary artisan considers the art of record.

17. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

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